

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

2017-P-0007

DOROTEO POLANCO,
PLAINTIFF/APPELLANT

V.

ANDRAS SANDOR, M.D.
DEFENDANT/APPELLEE

REPORTED DECISION from Middlesex Superior Court
BRIEF OF PLAINTIFF/DESIGNATED APPELLANT,
DOROTEO POLANCO

By:

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I. Jurisdictional Statement

Pursuant to Mass. R. Civ. P 64(a) Middlesex Superior (Kirpalani J.) Reports its interlocutory finding to the Appeals Court, by order dated November 8, 2016 Incorporate by reference Judge Kirpalani's order of November 8, 2016).

Statement of the Issue

The issue before this Court is discretely; whether posing of a \$6000. Surety bond satisfies G.L. c231 60B. In his order and Report to this Court, Judge Kirpalani identifies the inconsistencies throughout the Superior Courts of the Commonwealth in ruling on this discrete issue. This Appeal/Report seeks clarity/consistency as to whether a surety bond satisfies G.L. c231 60B.

II. Statement of Facts

The plaintiff timely filed a surety bond pursuant to G.L. 231 60B.

Defendant Sandor motioned to strike.

Judge Kirpalani allowed motion to strike and Reported this matter to this Court. Judge Kirpalani stayed the underlying proceedings pending a ruling on

the Appeal/Report. (Incorporate by reference Judge Kirpalani's order of November 8, 2016)

III. Statement of Case

This is a medical malpractice action. Plaintiff's offer of proof to the medical tribunal was not considered as it was deemed untimely (Incorporate by reference Judge Kirpalani's order of November 8, 2016.) Therefore, pursuant to G.L. 231 60 B, the plaintiff filed a surety bond in the amount of \$6000.

Defendant Sandor filed its motion to strike the surety bond as non-compliant with the statute. This Appeal/Report follows)

IV. Summary of Argument/Argument

\$6000 = \$6000.

A surety bond in the amount of \$6000 is equivalent to \$6000.

The legislature chose to add the words "or its equivalent" to the subject statute. The basic tenant of statutory interpretation is simply to give the legislatures word their ordinary meaning. Clearly the legislature contemplated an alternative to cash to satisfy the posting requirement under G.L. c 231 n 60B. The purpose of G.L. c231 60 B is not punitive.

V. Conclusion

The brevity of this argument is not to be cavalier, but simply to state the obvious \$6000 = \$6000 and the posting of a surety bond in the amount of \$6000. Satisfies all intents and purposes of G.L. c231 60B.

Respectfully Submitted,
Plaintiff/Appellant,
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By his attorney,

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2017 I filed the attached document(s) through the Electronic Filing Service Provider (Provider) for electronic service to the following registered Users: Allyson N. Hammerstedt, Esquire, John P. Mulvey, Esquire, Dylan Knapp, Esquire, James P. Donohue, Jr., Esquire. I hereby certify that on (May 3, 2017), copies to non-

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